

REMARKS

The Office Action dated March 30, 2007 has been reviewed and carefully considered. Claims 1-9 have been amended. Claim 10 has been cancelled. Claims 1-9 remain pending, the independent claims being claims 1 and 9. Reconsideration of the above-identified application, as amended and in view of the following remarks, is respectfully requested.

Paragraph 2 of the Office Action notes that the application lacks an Abstract. The application, as published, contains an abstract. In the event this abstract is deficient in some respect, it is suggested that the Examiner provide additional details as to this deficiency. In the interim, Applicants respectfully request that this objection be withdrawn.

The specification has been objected to for lacking section headings. Applicant respectfully submits that 37 CFR §1.77(b) discloses a *suggested* format for the arrangement of the disclosure. Applicant respectfully submits that the present disclosure follows the suggested format where applicable. With regard to 37 CFR §1.77(c), which was not cited in the Office Action, Applicant respectfully submits that section headings are suggested but not required, as 37 CFR §1.77(c) clearly states the sections defined in paragraphs (b) (1) through (b) (11) "should" be preceded by a section heading. Applicants respectfully decline at this time to amend the disclosure to include section headings.

Claims 1-10 were objected to for various informalities. Claims 1-10 stand rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. The claims have been amended to conform to current U.S. practice. With the above noted amendment to the claims, applicants believe that the reasons for each of the Examiner's objections and rejections under 35 USC 112, second paragraph, have been overcome. Applicants respectfully request the objections/rejections be withdrawn.

Claims 9 and 10 stand rejected under 35 USC 101 as being directed to non-statutory subject matter. In response, claim 10 has been cancelled and claim 9 has been amended to recite a "program storage device" claim format, in a manner that is deemed patentable in light of current PTO practice (ref. In re Beauregard). Accordingly, Applicants respectfully request the rejection under 35 USC 101 be withdrawn.

Claims 1 and 9-10 stand rejected under 35 USC 102(b) as being anticipated by Sekiya et al., U.S. Patent No. 5,648,652 (Hereinafter, "Sekiya"). Claims 2-3 and 6 stand rejected under 35 USC 103(a) as being unpatentable over Sekiya in view of Lauenstein et al., USPGPUB 2004/0241093 (Hereinafter, "Lauenstein"). Claims 4-5 and 7 stand rejected under 35 USC 103(a) as being unpatentable over Sekiya and Lauenstein in view of Kouri et al., U.S. Patent No. 6,847,737. Claim 8 stands rejected under 35 USC 103(a) as being unpatentable over Sekiya in view of Ryals et al. U.S. Patent No. 5,803,914.

Applicant respectfully disagrees with, and explicitly traverses, the Examiner's reason for rejecting the claims.

Claim 1, as amended, recites:

1. (Currently Amended) A medical image analysis process which utilizes information contained in at least one medical image, the process comprising:

- deriving a quantitative evaluation;
- delivering the quantitative evaluation as an output,
- performing an error analysis in order to provide information relating to the accuracy of the quantitative evaluation, said analysis yielding a result, and,
- delivering the result as a further output.

Sekiya teaches a focus adjustment and focus evaluation method and apparatus (ref. col. 1, lines 9-10 of Sekiya). As noted by the Examiner, Sekiya does teach the use of his invention in medical devices (e.g., endoscopes as cited at col. 3, line 8). However, the teachings of Sekiya are distinguishable from the present invention for numerous, significant reasons. Further, Sekiya fails to teach or even suggest various features of the invention as defined by claim 1. In this regard, Applicants submit that the Office Action confuses the various features recited in claim 1.

Claim 1 recites a process related to information contained in at least one medical image, and derives and delivers a quantitative evaluation as an output. It further recites that an error analysis is performed with respect to the accuracy of the quantitative evaluation, and the results of this analysis are delivered as a further output. The Office

Action fails to properly address these two aspects of the invention. In Sekiya the quantitative evaluation itself is the error analysis, not the separate analysis required by the claim language.

Paragraph 10 of the Office Action refers to col. 6, lines 10-27 as teaching the feature that a quantitative evaluation is derived from the medical image analysis process. In fact, this cited passage relates to a focus evaluation – not any quantitative evaluation of the medical image (e.g., that a tumor is present). Arguably, such a focus analysis is a type of error analysis. However, it is not quantitative evaluation of the image itself, as described in paragraph [0003] of the application as published. The Office Action further cites col. 2, lines 30-31 of Sekiya as teaching the quantitative evaluation feature. However, this passage teaches the use of a moving screen to change object positions to obtain focus data – again, not a quantitative evaluation of the medical image as defined by the present application.

The Office Action further recites an error analysis being performed in Sekiya at col. 20, lines 50-54. This cited analysis further relates to focus data. Assuming, arguendo, that the focus analysis discussed above rises to the level of quantitative evaluation of a medical image, this cited passage only further discusses this focus feature. Accordingly, Sekiya fails to teach the feature of the present invention wherein an error analysis yields a further output. This is evidenced by the fact that the Office Action itself

points to col. 21, lines 2-5 as teaching both an outputted quantitative evaluation and an error analysis with respect to that evaluation.

A claim is anticipated only if each and every element recited therein is expressly or inherently described in a single prior art reference. Sekiya cannot be said to anticipate the present invention, because Sekiya fails to disclose each and every element recited. As shown, Sekiya fails to disclose the limitations of "deriving ... [and] delivering a quantitative evaluation as an output ... [and] performing an error analysis ... relating to the accuracy of the quantitative evaluation ... and delivering the result [of this analysis] as a further output" as is recited in claim 1. Claim 9 also contains this feature and is deemed patentable over Sekiya for at least the same reasons.

Having shown that Sekiya fails to disclose each and every element claimed, Applicants submit that the reason for the Examiner's rejection of claims 1 and 9 have been overcome and can no longer be sustained. Applicants respectfully request reconsideration, withdrawal of the rejection and allowance of claims 1 and 9.

With regard to claims 2-8, these claims depend from claim 1, which has been shown to be not anticipated and allowable in view of the cited references. Accordingly, claims 2-8 are also allowable by virtue of their dependence from an allowable base claim. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual consideration of the patentability of each on its own merits is respectfully requested.

In particular, with respect to the Office Action rejection of claims 2 and 3 (and claims 4-8 dependent therefrom), Applicants wish to note that Lauenstein relates to formulations for use in medical and diagnostic procedures. Moreover, the passage of Lauenstein (paragraph 95, line 10) applied in the §103 rejection in paragraph 12 of the Office Action relates to a method by which an artifact induced by a contrast agent is avoided by a scientific analysis of an alternative agent. There is nothing in Lauenstein which teaches or suggests the feature of claim 2 (or 3) by which an artifact (or step) contributing to an image analysis process is identified, its influence is calculated, and this influence is delivered as an additional output.

Having shown that the combined device resulting from the teachings of the cited references does not include all the elements of the present invention, applicant submits that the reasons for the Examiner's rejections of claims 2 and 3 have been overcome and can no longer be sustained. Applicants respectfully requests reconsideration, withdrawal of the rejection and allowance of the claims.

In the matter of obviousness there is a great emphasis placed on "the importance of the motivation to combine." For example, the court in Yamanouchi Pharmaceutical Co. v. Danbury Pharmacal, Inc. 231 F. 3d. 1339, 56 USPQ2d. 1641, 1644 (Fed. Cir. 2000) found that:

an examiner ... may often find every element of a claimed invention in the prior art. If identification of each claimed element of the prior art was sufficient to negate patentability, very few patents would ever issue. Furthermore rejecting patents solely by finding prior art

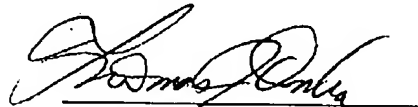
corollaries for the claimed elements would permit an examiner ... to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention ... To counter this potential weakness in the obviousness construct, the suggestion to combine requirements stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness. *id.* quoting *In re Rouffet*, 149 F.3d 1350, 1357-58, 47 USPQ 2d 1453, 1457 (Fed. Cir. 1998)

In this case, Applicants believe that with regard to the referred-to claims, the Examiner has impermissibly incorporated the teachings of the present invention in the cited reference to reject the claims. Accordingly, Applicants submit that the reasons for the Examiner's rejections of the claims have been overcome and the rejection can no longer be sustained. Applicants respectfully request reconsideration, withdrawal of the rejection and allowance of claims 2 and 3.

For all the foregoing reasons, it is respectfully submitted that all the present claims are patentable in view of the cited references. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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